IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition No.8739 of 2007

Smt. Shantaben @ Kamalaben H. Rami
@ Gheewala & Others ..Petitioners

versus

Shri Gordhandas Vithaldas Davda
& Others ..Respondents

Mr.Prasad S. Dani for the Petitioner

Mr.R.A.Thorat for the respondent No.1

Coram : S.C.Dharmadhikari, J.
Dated : 6th Dec., 2007

P.C.

1. This is a petition by the original defendant challenging the Order passed by the trial court permitting amendment to the plaint.

2. The suit is of the year 1985 and the interim notice was taken out therein to amend the plaint. The amendment is allowed. However, the argument is that the alleged subsequent events cannot be incorporated and even if allowed to be incorporated, any claim on that basis is barred by limitation. His submission is that this aspect is not left open by the impugned order and the learned trial Judge has virtually concluded that the claim is not barred by limitation.

3. I have perused the order under challenge. The order under challenge records the submission of the parties and thereafter all that it says is that the present petitioner are added as party defendants after the death of the original defendants and they have filed their additional written statement on 17.12.2003. The order records that such steps will have bearing on the matter_. The learned Judge has not recorded that the plaintiffs are entitled to the relief claimed on the basis of the amended pleas nor has he turned down or rejected the submissions of the present petitioners that the claim is barred by limitation. The court has made some tentative observation at the time of amendment being granted. The order must be seen as made during the course of deciding amendment application. It cannot finally conclude the issue of limitation. A ll amendments which have been granted are therefore subject to the bar of limitation which can be raised by present petitioner and if raised, appropriate issue be framed in that behalf. Keeping all pleas open for both sides on this issue the present petition is disposed.

(S.C.Dharmadhikari, J.)